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* TENNESSEE SUPREME COURT
CERTIFIED MEDIATOR
** ALSO LICENSED IN GEORGIA

August 9, 2007

The Honorable Jim Fyke, Commissioner
Tennessee Department of Environment & Conservation
L&C Annex, 1st Floor
401 Church Street
Nashville, Tennessee 37243

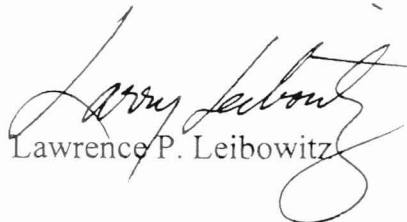
RE: Intex Enterprises, LLC

Commissioner Fyke:

Enclosed please find Intex Enterprises, LLC's Petition for Appeal of the Commissioner's Order and Assessment. We have been in contact with Max Fleischer, Esq. and are hopeful that this matter will be resolved in the near future.

Sincerely yours,

LEIBOWITZ & COHEN


Lawrence P. Leibowitz

LPL/jlk
Enclosure

cc: Mr. Paul E. Davis
Max Fleischer, Esq.

LPL\Intex\Ltr-Commissioner

RECEIVED
AUG 10 2007
DEPT OF ENVIRONMENT AND CONSERVATION
OFFICE OF GENERAL COUNSEL

**BEFORE THE STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
INTEX ENTERPRISES, LLC)	
)	
)	
RESPONDENT)	CASE NO. 07-0242

**PETITION FOR APPEAL OF COMMISSIONER'S ORDER AND
ASSESSMENT AND REQUEST FOR HEARING BEFORE THE
TENNESSEE WATER QUALITY CONTROL BOARD**

Respondent, Intex Enterprises, LLC, ("Intex") hereby files this Petition for Appeal of the Order and Assessment dated July 3, 2007 and received on July 12, 2007, and requests a hearing before the Tennessee Water Quality Control Board pursuant to Tenn. Code Ann. §§ 69-3-101 *et seq.*, Tenn. Code Ann. § 69-3-109(3), Tenn. Code Ann. § 69-3-110, Tenn. Code Ann. §§ 4-5-301 *et seq.*, (the Uniform Administrative Procedures Act or "UAPA"), and Rule 1200-4-1-.02. By this Petition and Request for Hearing, Intex appeals the "Commissioner's Order and Assessment," dated July 3, 2007 and received on July 12, 2007 and request that the Water Quality Control Board ("Board") conduct a hearing on this Petition.

BACKGROUND

1. The Commissioner of the Tennessee Department of Environment & Conservation ("TDEC") issued an Order and Assessment against Intex dated July 3, 2007.
2. Intex received the Order and Assessment on July 12, 2007.

3. Pursuant to Tenn. Code Ann. § 69-3-110(a)(3) and TDEC Rule 1200-4-1-.02(3) this Petition has been timely filed.

4. Respondent Intex is a Tennessee Limited Liability Company doing business in Clinton, Tennessee, among other places.

GROUND FOR APPEAL AND REQUEST FOR HEARING

5. With respect to the facts alleged in Paragraphs VII through XXX, Intex contends that they are in substantial compliance and that any violations which may have occurred were inadvertent and any necessary remedial action has been taken.

6. With respect to the entirety of the Order, including Subsections 1 through 5 of Paragraph XXXV, Intex contends that as of the date of filing of the Petition they are substantially compliant. Intex disagrees with some specifics in the contentions of the Department of Environment and Conservation.

7. To the extent Intex may have failed to comply with the terms and conditions of the permit and/or violated statute(s), Intex is taking appropriate remedial action. Intex is endeavoring to accomplish all remedial action necessary in a timely manner. Intex believes the civil penalties as assessed are excessive and should be reduced or eliminated.

8. With regard to the Order and Assessment, including Subsection 1 of Paragraph XXXV, Intex contends that as of the date of filing of the Petition they are substantially compliant. Intex submitted the discharge monitoring results for February 2007 on July 27, 2007.

9. With regard to the Order and Assessment, including Subsection 2 of Paragraph XXXV, Intex contends that as of the date of filing of the Petition they are substantially compliant. Intex has contracted with Microbac Laboratories to conduct the monthly chemical and biological

monitoring in Buffalo Creek as required by Part III, Section F of the permit. Microbac Laboratories is in the business of water sampling for chemical and biological monitoring. A sampling was completed by Microbac Laboratories on July 20, 2007, for which Intex has not yet received the results. Once the results are received by Intex, the results will be submitted to the manager of the Division's KEFO, located at 3711 Middlebrook Pike, Knoxville, Tennessee 37921; and the manager of the Division's Enforcement and Compliance Section. The biological monitoring will be done by Microbac Laboratories on a semi-annual basis. The first test will take place on Monday, August 13, 2007, and the results will be submitted as soon as practical thereafter.

10. With regard to the Order and Assessment, including Subsection 3 of Paragraph XXXV, Intex contends that as of the date of filing of the Petition they are substantially compliant. Intex has consulted with S&ME to create a plan that will list actions to be taken by Intex to become compliant with the effluent limitations prescribed in the subject permit. The plan will be submitted to the Division when completed and within thirty (30) days of receipt of the Order and Assessment.

11. With regard to the Order and Assessment, including Subsection 4 of Paragraph XXXV, Intex contends that they intend to become substantially compliant within sixty (60) days of the Division's approval of the plan to be submitted by Intex.

12. With regard to the Order and Assessment, including Subsection 5 of Paragraph XXXV, Intex contends that they have been in contact with the City of Clinton regarding connection to the City's sewer system. Intex met with City representatives on August 6, 2007 and obtained the necessary application required to hook up to the City sewer system. Intex is in the processing of completing the application and is of the understanding that actual connection to the sewer system could take up to three weeks or more once the application is submitted. Intex intends to submit the

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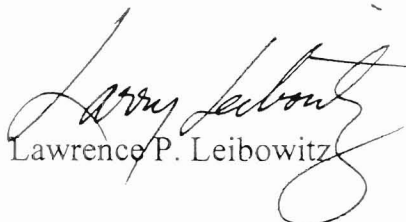
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application and become fully compliant with Subsection 5 of Paragraph XXXV as soon as practical thereafter.

13. With respect to the alleged violation of T.C.A. § 69-3-108(b) by allegedly failing to comply with the terms and conditions of the permit, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the terms and conditions of the permit.

14. With respect to the alleged violation of T.C.A. § 69-3-114(b) by allegedly failing to comply with the terms and conditions of the permit, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the terms and conditions of the permit.

15. With respect to the alleged violation of T.C.A. § 69-3-114(a) by allegedly discharging wastewater into waters of the state that allegedly resulted in a condition of pollution, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the law.

16. With respect to the alleged violation of T.C.A. § 69-3-114(b) by allegedly discharging wastewater into waters of the state that allegedly resulted in a condition of pollution, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the law.

17. With respect to the alleged violation of T.C.A. § 69-3-108(b)(3) by allegedly discharging wastewater from a location other than a permitted outfall, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the law.

18. With respect to the alleged violation of T.C.A. § 69-3-114(a) by allegedly discharging wastewater from a location other than a permitted outfall, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the law.

19. With respect to the civil penalties assessed in Subsection 6 of Paragraph XXXV of the Order and Assessment, Intex contends that as of the date of filing of the Petition they are in

substantial compliance with the Order and Assessment and therefore should be excused from paying any civil penalties, and in the alternative, upon timely payment of the initial Twenty Thousand Dollars (\$20,000) Intex should be excused from paying the remainder of civil penalties assessed. The civil penalty for the violations alleged is unduly burdensome, arbitrary, capricious, and an abuse of discretion.

20. With respect to the civil penalties assessed in Subsection 7 of Paragraph XXXV of the Order and Assessment and relating to the investigative costs, Intex contends that as of the date of filing of the Petition they are in substantial compliance with the Order and Assessment and therefore should be excused from paying any civil penalties, and in the alternative, timely payment of Twelve Thousand Sixty-Six Dollars and Ninety-Six Cents (\$12,066.96) for investigative costs will be made.

21. Intex Enterprises, LLC neither admits nor denies the truth or sufficiency of provisions of the Order and Assessment not specifically addressed herein. Intex Enterprises, LLC reserves the right to amend this petition. In submitting this petition, Intex Enterprises, LLC does not implicitly or expressly waive any defenses it may have in this or any other future enforcement action.

22. Intex Enterprises, LLC respectfully requests that the Commissioner's Order be reversed, and that Intex Enterprises, LLC be granted any such other relief to which it may be entitled.

WHEREFORE, RESPONDENTS HEREBY REQUEST THE FOLLOWING RELIEF:

1. That the Division, Office of General Counsel, and other TDEC personnel meet with Respondent and negotiate appropriate civil penalties, damages, and other relief.

2. If the negotiations requested above do not result in a mutually agreeable resolution of this Order and Assessment, that the Board hold a hearing on this appeal.

Respectfully submitted this 9 day of August, 2007.

LEIBOWITZ & COHEN


Lawrence P. Leibowitz (BPR #000974)

C. Ryan Stinnett (BPR #025085)

Counsel for Defendant/Counter-Plaintiff

608 S. Gay Street, Suite 200

Knoxville, Tennessee 37902

Telephone: (865) 637-1809

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this original document is being served upon the Commissioner, via overnight delivery, addressed as follows:

The Honorable Jim Fyke, Commissioner
Tennessee Department of Environment and Conservation
L&C Annex, 1st Floor
401 Church Street
Nashville, Tennessee 37243

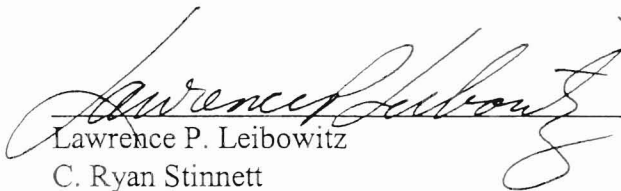
and that copies of the same were sent via overnight delivery to:

Mr. Paul E. Davis, Director
Division of Water Pollution Control and Technical Secretary,
Water Quality Control Board
L&C Annex, 6th Floor
401 Church Street
Nashville, Tennessee 37243

Max A. Fleischer, Esq.
Office of General Counsel
Tennessee Department of Environment and Conservation
401 Church Street
L&C Tower, 20th Floor
Nashville, Tennessee 37243

This 9 day of August, 2007.

LEIBOWITZ & COHEN


Lawrence P. Leibowitz

C. Ryan Stinnett